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In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 39

J. J. NATHANSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

No opinion was rendered by the District Court. The opinion of the Circuit Court of Appeals (R. 18–23) is reported in 63 F. (2d) 937.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 1, 1933 (R. 22). The petition for certiorari was filed April 26, 1933, and was granted May 29, 1933 (R. 23). Jurisdiction to issue the writ is conferred by Section 240 (a) of

the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the trial court erred in refusing to suppress evidence obtained upon a warrant to search a dwelling house issued, under Section 595 of the Tariff Act of 1922, to a customs officer upon the officer's sworn statement that he had cause to suspect and did believe that certain liquors of foreign origin upon which the duties had not been paid were concealed in the dwelling house to be searched.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (Italics ours.)

Section 595 of the Tariff Act of 1922, c. 356, Title IV, 42 Stat. 858, 983 (U.S.C., Title 19, Sec. 499), provides, so far as material here:

> WARRANT.—If any collector of customs or other officer, or person authorized to make searches and seizures shall have cause to suspect the presence in any dwelling house, store, or other building or place of any mer-

> chandise upon which the duties have not been paid, or which has been otherwise brought into the United States contrary to law, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any United States commissioner, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise * * *.

STATEMENT

Criminal information was filed June 11, 1930, by the United States Attorney for the District of New Jersey against Martin and J. J. Nathanson, charging them with the unlawful possession of whiskey and various other liquors (R. 3) an itemized list of which, indicating their foreign origin, will be found in the affidavits of the customs agent who searched for and seized them (R. 4–6). This customs agent, Francis B. Laughlin, testified that he "knew the Nathansons already," that he had information from Mr. Porter, the prohibition agent in charge in Atlantic City, and some of his agents, as well as from an informer, whose name was not allowed to be given, tending to show that the Nathansons were engaged in smuggling liquors or other merchandise, in the night-time, and concealing it on their premises, that this information confirmed his own belief about what was going on and

in accordance therewith he made sworn complaint before Hon. Wm. H. Smathers, Judge of the Common Pleas of Atlantic County, New Jersey, who thereupon and after ascertaining the sources of the customs agent's suspicion and belief, issued a search warrant, authorizing him to enter and search the premises and to seize the merchandise. This warrant was introduced as Defendant's Exhibit No. 1 and the evidence above narrated was brought out by his counsel (R. 9–14), who waived proof of the alcohol content of the merchandise which was seized (R. 9) and proposed that Martin Nathanson would plead guilty if J. J. Nathanson (petitioner) was convicted, to which the court and the United States Attorney agreed (R. 15).

The customs agent further testified as to the method of search, as to finding the liquors in a wooden gutter along one side of the cellar of the house, occupied as a dwelling, and as to handing Mrs. Nathanson the warrant and receipt for the liquors (R. 9). This occurred in the early afternoon of May 1, 1930, according to the agent's affidavit (R. 5). The agent also testified that he acted, in obtaining the warrant and making the search and seizure, as a customs agent looking for smuggled goods and not for or at the instance of the prohibition agents, although in part upon information furnished by them (R. 11, 12).

J. J. Nathanson was adjudged guilty, fined $500, and appealed, having made a preliminary motion to suppress the evidence and for a directed verdict.

The judgment was affirmed by the Circuit Court of Appeals for the Third Circuit in an opinion filed March 1, 1933 (R. 18–22).

ARGUMENT

The affidavit of the customs agent, upon which the warrant issued, does not appear in the record, but in part it is set out on page 3 of the brief filed for petitioner in this Court and in the opinion of the Circuit Court of Appeals, which states (R. 19):

> The affidavit of the customs agent set forth that the affiant "has cause to suspect and does believe that certain merchandise, to-wit: liquors of Canadian and other foreign origin, a more particular description of which cannot be given, upon which the duties have not been paid, or which has otherwise been brought into the United States contrary to law, and that said merchandise is now deposited and contained within the premises of J. J. Nathanson.

The search warrant, introduced by defendant, also recited that the agent made a sworn complaint before and was examined by the County Judge (R. 10), and the agent testified that he made the affidavit (R. 11) which was in the customary form (R. 13, 15). It is safe to state, therefore, that it complied fully with the requirements of Section 595, of the Tariff Act of 1922, under which the warrant issued. This Act, and particularly this section, goes back to the Act of July 31, 1789, c. 5, 1 Stat. 29, Section 24, which provides (1 Stat. 43):

> That every collector, naval officer and surveyor, or other person specially appointed by either of them for that purpose, shall have full power and authority, to enter any ship or vessel, in which they shall have reason to suspect any goods, wares or merchandise subject to duty shall be concealed; and therein to search for, seize, and secure any such goods, wares or merchandise; and if they shall have cause to suspect a concealment thereof, in any particular *dwelling-house*, store, building, or other place, they or either of them shall, upon application on oath or affirmation to any justice of the peace, be entitled to a warrant to enter such house, store, or other place (in the day time only) and there to search for such goods, and if any shall be found, to seize and secure the same for trial; and all such goods, wares and merchandise, on which the duties shall not have been paid or secured, shall be forfeited. (Italics ours.)

In Section 5, Act of April 18, 1806, 2 Stat. 379, 380, prohibiting the importation of certain goods, it was similarly provided:

> That every collector, naval officer, surveyor, or other officer of the customs, shall have the like power and authority to seize goods, wares and merchandise imported contrary to the intent and meaning of this act, to keep the same in custody until it shall have been ascertained whether the same have been forfeited, or not, and to enter any ship or vessel, *dwelling-house*, store, building or

> other place, for the purpose of searching for and seizing any such goods, wares and merchandise, which he or they now have by law, in relation to goods, wares and merchandise subject to duty; * * * (Italics ours.)

and in the Internal Revenue Act, R.S. 3462, as amended, U.S.C., Title 26, Sec. 1195, the corresponding provision is:

> The several judges of the district courts of the United States, and United States commissioners, may, within their respective jurisdictions, issue a search warrant, authorizing any internal-revenue officer to search any premises within the same, if such officer makes oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of the said premises.

It will, of course, be observed that the prohibition of the Fourth Amendment is against *unreasonable* searches and seizures, as emphasized in the concurring opinion in *Boyd* v. *United States,* 116 U.S. 616, 641:

> The things here forbidden are two—search and seizure. And not all searches nor all seizures are forbidden, but only those that are unreasonable. Reasonable searches, therefore, may be allowed, and if the thing sought be found, it may be seized.
>
> * * * * *
>
> While the framers of the Constitution had their attention drawn, no doubt, to the

abuses of this power of searching private houses and seizing private papers, as practiced in England, it is obvious that they only intended to restrain the abuse, while they did not abolish the power. Hence it is only *unreasonable* searches and seizures that are forbidden, and the means of securing this protection was by abolishing searches under warrants, which were called general warrants, because they authorized searches in any place, for any thing.

This was forbidden, while searches founded on affidavits, and made under warrants which described the thing to be searched for, the person and place to be searched, are still permitted.

The Eighteenth Amendment and the National Prohibition Act were, of course, unheard of when the Constitution was adopted, but this is not true of smuggling and, hence, we have the same Congress which proposed the Fourth Amendment for adoption passing the Act of July 31, 1789, which, practically speaking, has been in force ever since and is virtually the Tariff Act of 1922 as it relates to searches and seizures. From the very beginning, therefore, it was recognized that searches and seizures were necessary to maintain revenue and to prevent violations of the customs and navigation laws; and equally so that to be effective they could not await conviction upon proof beyond a reasonable doubt, or upon the production of prima facie evidence, but that the search was reasonable or per-

missible if the customs officer acted upon bona fide belief and justified suspicion or information that appeared to be reliable.

Thus in *Boyd* v. *United States, supra,* relied upon by petitioner, it is said (pp. 623–624):

> In the one case, the government is entitled to the possession of the property; in the other it is not. The seizure of stolen goods is authorized by the common law; and the seizure of goods forfeited for a breach of the revenue laws, or concealed to avoid the duties payable on them, has been authorized by English statutes for at least two centuries past; and the like seizures have been authorized by our own revenue acts from the commencement of the government. The first statute passed by Congress to regulate the collection of duties, the act of July 31, 1789, 1 Stat. 29, 43, contains provisions to this effect. As this act was passed by the same Congress which proposed for adoption the original amendments to the Constitution, it is clear that the members of that body did not regard searches and seizures of this kind as "unreasonable," and they are not embraced within the prohibition of the amendment. So, also, the supervision authorized to be exercised by officers of the revenue over the manufacture or custody of excisable articles, and the entries thereof in books required by law to be kept for their inspection, are necessarily excepted out of the category of unreasonable searches and seizures. * * *.

Similarly, in support of the revenue laws (Act of July 13, 1866, c. 184, 14 Stat. 98, Sec. 3450, R.S.), Congress prescribed the forfeiture not only of goods and commodities evading payment of taxes, but of conveyances used in their removal and in *Goldsmith-Grant Co.* v. *United States,* 254 U.S. 505, this Court upheld the same as no violation of the Fifth Amendment even if such use of the conveyance was without the knowledge and against the will of its innocent owner, saying (p. 510):

> Regarded in this abstraction the argument is formidable, but there are other and militating considerations. Congress must have taken into account the necessities of the Government, its revenues and policies, and was faced with the necessity of making provision against their violation or evasion and the ways and means of violation or evasion. * * *

Likewise, in *General Motors Corp.* v. *United States,* 286 U.S. 49, at page 57, it is said:

> The forfeiture may be enforced even against innocent owners, though the Secretary of the Treasury may remit it, upon such terms as he deems reasonable, if satisfied that there was neither wilful negligence nor intent to violate the law. R. S. Sec. 3078; Tariff Acts of 1922 and 1930, Secs. 613, 618. The penalty is at times a hard one, but it is imposed by the statute in terms too clear to be misread.

And in the same case it is held (p. 56):

> The importation of intoxicating liquors without permit and without payment of customs duties is a violation of the tariff act and a criminal offense thereunder. This was the law under the tariff act of 1922, enacted after the adoption of the Eighteenth Amendment. Tariff Act of 1922, c. 356, Sec. 593 b, 42 Stat. 982; U. S. C., Title 19, Sec. 497. It is still the law under the present tariff act of 1930; U. S. C., Title 19, Sec. 1593. * * *

While it may not be necessary to go as far as did the Circuit Court of Appeals, Second Circuit, in *United States* v. *Federal Mail Order Corp.*, 47 F. (2d) 164, 165, C.C.A. 2d), in saying:

> Were a practice shown antedating 1789, by which it was customary to seize smuggled goods upon a showing of no more than the unsupported suspicion of a customs officer, it may well be that this should be recognized as an exception to the amendment * * *

it is certain the Fourth Amendment did not contemplate that the cellar of a man's house should afford safe haven for smuggled goods or constitute a barrier against those authorized and required to find them. It seems, therefore, that good ground may exist for the distinction made by the Circuit Court in this case, when it said (R. 19–20, 22):

> Had this warrant issued under authority of the Prohibition Act it would be invalid,

since the affidavit was merely based upon cause to suspect and suspicion * * *

but

> In the instant case the seizure was under the tariff laws. The government had a pecuniary interest in the smuggled goods. Following the reasoning in the cases cited, we conclude that that interest was sufficient to justify the issuance of the search warrant and that the search and seizure, based on the sworn complaint (phrased almost in the very words of the Tariff Act) and the warrant thereon, did not violate the constitutional rights of the defendant.

It then rested its decision upon the authority of *Bookbinder* v. *United States,* 287 Fed. 790 (C.C.A. 3d), certiorari denied, 262 U.S. 748, which concludes (p. 796):

> The plaintiff in error next contends that the search warrant under which his liquors were found and seized was invalid because issued under the Customs Laws and not under the National Prohibition Act, and invalid because of its own infirmities, and that, in consequence, the evidence produced thereby should not have been admitted against him. We subscribe to the reasoning of the learned trial judge before whom this question was argued. Therefore, in affirming his conclusion, we shall do nothing more than cite the authorities upon which it is based, keeping clearly in mind the distinction between a seizure, as here, of smuggled

goods and a seizure of liquors believed to be in stock for the purpose of illicit sale. Locke v. United States, 11 U. S. 337; Boyd v. United States, 116 U. S. 616; Gouled v. United States, 255 U. S. 298, 41 Sup. Ct. 261, 65 L. Ed. 647; United States v. Ray & Schultz (D. C.), 275 Fed. 1005; United States v. Rykowski (D. C.), 267 Fed. 866; United States v. Kelih (D. C.), 272 Fed. 484; Weeks v. United States, 232 U. S. 383, 34 Sup. Ct. 341, 58 L. Ed. 652, L. R. A. 1915B, 834, Ann. Cas. 1915C, 1177; Silverthorne v. United States, 251 U. S. 385, 40 Sup. Ct. 182, 64 L. Ed. 319; Veeder v. United States, 252 Fed. 414, 164 C. C. A. 338; certiorari denied, see United States v. Veeder, 246 U. S. 675, 38 Sup. Ct. 428, 62 L. Ed. 933; In re Tri-State Coal & Coke Co. (D. C.), 253 Fed. 605; Amos v. United States, 255 U. S. 313, 41 Sup. Ct. 266, 65 L. Ed. 654.

It is now settled that when liquors have been lawfully obtained under a valid search warrant they may be used as evidence by the government in prosecuting a person for an offense different from that charged against him in the affidavit upon which the search warrant was issued. Gouled v. United States, 255 U. S. 298, 41 Sup. Ct. 261, 65 L. Ed. 647.

The immediate question which emerges is whether the search and seizure in Nathanson's case was unreasonable and without probable cause, unsupported by oath or affirmation within the meaning

of the Fourth Amendment. Perhaps the readiest reply to be made is that

> There is no formula for the determination of reasonableness. Each case is to be decided on its own facts and circumstances. * * *

as was said in *Go-Bart Co.* v. *United States,* 282 U.S. 344, at p. 357, but here we deal with a single case which is fairly representative of a large class of cases, hence the importance of distinguishing between searches and seizures under the Customs and Revenue laws and those under the National Prohibition and Espionage Acts. Certainly as far back as the Fourth Amendment itself, Congress recognized the necessity of allowing entry into dwelling houses, under search warrants, in order to find and seize smuggled goods likely to be concealed therein, and by the Act of July 31, 1789, *supra,* provided (1 Stat. 43):

> * * * if they [the authorized officers] shall have cause to suspect a concealment thereof, in any particular dwelling-house * * * they or either of them shall, upon application on oath or affirmation to any justice of the peace, be entitled to a warrant to enter such house * * * (in the day time only) and there to search for such goods, and if any shall be found, to seize and secure the same for trial * * *

it being in the nature of a proceeding in rem. This was somewhat strengthened by the Tariff Act of 1922, which authorized entry and search of a dwell-

ing house only in the day time, but of a store, or other building or place at night or by day; otherwise the essentials in both are that the officer should have "cause to suspect" and should make oath or affirmation of that fact upon his application for a warrant. The requirement of the Internal Revenue Act, *supra,* is substantially the same (U.S.C., Title 26, Sec. 1195):

> * * * if such officer makes oath in writing that he has reason to believe, and does believe, that a fraud upon the revenue has been or is being committed upon or by the use of said premises.

In Nathanson's case, the customs officer not only had cause to suspect, of which he made sworn complaint, but direct information, which he believed to be reliable and which he disclosed to the judge who considered the same and issued the warrant pursuant to the statute; nor does the fact that this information came from prohibition agents who had been on the lookout and from an informer, detract from it, especially as it turned out to be correct. It is hardly to be expected or required in this class of cases that the customs agent or some other eyewitness who reported to him must have seen the goods as they left Canada, or other foreign country, and arrived in New Jersey by speed boat, airplane, or automobile, and watched the identical goods as they were carried into Nathanson's cellar in the nighttime, a practical impossibility. Thus it was said by Chief Justice Marshall in *Locke* v. *United States,* 7 Cranch 339, 347:

> It is contended, that probable cause means *prima facie* evidence, or, in other words, such evidence as, in the absence of exculpatory proof, would justify condemnation. This argument has been very satisfactorily answered on the part of the United States, by the observation, that this would render the provision totally inoperative. It may be added, that the term "probable cause," according to its usual acceptation, means less than evidence which would justify condemnation; and in all cases of seizure, has a fixed and well-known meaning. It imports a seizure made under circumstances which warrant suspicion. In this, its legal sense, the court must understand the term to have been used by congress.

As to searches and seizures under the National Prohibition and Espionage Acts it may be admitted that the rule is otherwise, but so are the Acts of Congress relating to them and there is a legal distinction to be observed. The requirements are altogether different. Under the National Prohibition Act, c. 85, 41 Stat. 305, 315 (U.S.C., Title 27, Sec. 39):

> No search warrant shall issue to search any private dwelling occupied as such unless it is being used for the unlawful sale of intoxicating liquor, or unless it is in part used for some business purpose such as a store, shop, saloon, restaurant, hotel, or boarding house. * * *

in addition to which it is prescribed in the Espionage Act that the complainant and other witnesses

shall be examined or their depositions taken with a degree of particularity that is not required under the Customs and Revenue laws.

There may be several reasons for this difference. Searches and seizures under the Prohibition and Espionage Acts, are, as a general statement, intended to procure evidence primarily for the purpose of convicting a defendant, and the warrants may be sworn out by any person producing evidence or making the necessary affidavit. This, we assume, is what is meant in *Grau* v. *United States,* 287 U.S. 124, 128, in which the Court said:

> A search warrant may issue only upon evidence which would be competent in the trial of the offense before a jury (*Giles* v. *United States,* 284 Fed. 208; *Wagner* v. *United States,* 8 F. (2d) 581); and would lead a man of prudence and caution to believe that the offense has been committed. *Steele* v. *United States,* 267 U. S. 498, 504. Tested by these standards the affidavit was insufficient. While a dwelling used as a manufactory or headquarters for merchandising may well be and doubtless often is the place of sale, its use for those purposes is not alone probable cause for believing that actual sales are there made.

On the other hand, under the Customs and Revenue laws, the primary purpose is to collect revenue, and prevent smuggling, and it is contemplated that the warrant will be applied for by an officer of some standing and experience who ordinarily will act with a reasonable amount of discretion, without be-

ing overcome by excessive zeal or personal prejudice. Besides, to apply the same rule in this class of cases "would render the provision totally inoperative," as observed by Chief Justice Marshall in *Locke* v. *United States, supra,* p. 16.

It is also important to observe that Section 23 of the Act of June 15, 1917, c. 30, Title XI, 40 Stat. 230 (U.S.C., Title 18, Sec. 633), expressly saves the provisions of the Customs and Revenue laws—

> Nothing contained in this title shall be held to repeal or impair any existing provisions of law regulating search and the issue of search warrants.

As was observed by Mr. Justice Cardozo in *General Motors Corp.* v. *United States,* 286 U.S. 49, 61, 62:

> To refuse to give heed to these distinctions will lead us into a morass of practical difficulties as well as doctrinal refinements. * * * We cannot bring ourselves to believe that Congress had in view the creation of so great a breach in historic remedies and sanctions. * * * Indeed, the breach, if we once allow it, will hardly be confined within the ramparts of the acts that regulate the duties upon imports. If a forfeiture under the customs laws is forbidden where there has been an unlawful importation of intoxicating liquors, we shall have difficulty in upholding a forfeiture where there has been a violation of the navigation laws or other cognate statutes. Already the net of these complexities has entangled the decisions. Cf. *The Ruth Mildred, post,* p.

67, and *General Import & Export Co.* v. *United States, post,* p. 70. Courts accepting the conclusion that the customs forfeitures are ended in respect of intoxicating liquors have been unable to extricate themselves from the conclusion that forfeitures under the navigation acts have fallen at the same time. A halt must be called before the tangle is so intricate that it can no longer be unraveled.

The fact that the search warrant was obtained and seizure made under the Tariff Act, but that Nathanson was convicted under the Prohibition Law, affords no ground for reversal, nor is the question raised in his behalf. *Gouled* v. *United States,* 255 U.S. 298.

CONCLUSION

We submit, therefore, that the question involved is of importance and that serious consequences are likely to ensue if it be held that the requirements of the National Prohibition and Espionage Acts must be observed in obtaining warrants for searches and seizures under the Customs and Revenue laws; and that this case, in particular, presents no occasion for overturning a statute that is contemporaneous with the Fourth Amendment.

Respectfully,

J. CRAWFORD BIGGS,
Solicitor General.

ANGUS D. MACLEAN,
Assistant Solicitor General.

U. S. GOVERNMENT PRINTING OFFICE: 1933

SUPREME COURT OF THE UNITED STATES.

No. 39.—October Term, 1933.

J. J. Nathanson, Petitioner, vs. The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 6, 1933.]

Mr. Justice McReynolds delivered the opinion of the Court.

In the trial court where he was defendant under a criminal information, petitioner Nathanson duly, but unsuccessfully, challenged the admission as evidence of certain liquors seized under color of a search warrant issued, he claimed, in violation of the Fourth Amendment. The Circuit Court of Appeals affirmed the judgment against him.

Upon complaint of the customs agent in charge, a State judge sent out the questioned warrant. Its pertinent recitals and command follow.

> "Whereas said Francis B. Laughlin has stated under his oath that he has cause to suspect and does believe that certain merchandise, to wit: Certain liquors of foreign origin a more particular description of which cannot be given, upon which the duties have not been paid, or which has otherwise been brought into the United States contrary to law, and that said merchandise is now deposited and contained within the premises of J. J. Nathanson said premises being described as a 2 story frame dwelling located at 117 No. Bartram Ave. . . .; and
>
> "Whereas said Francis B. Laughlin has requested that a warrant issue to him, authorizing him to enter said premises and search for and seize said merchandise:
>
> "Now, therefore, you are commanded, in the name and by the authority of the President of the United States, to enter and search the premises hereinbefore described, in the day-

time (if a dwelling house) at any time of the day or night (if other than a dwelling house) and to seize and take into your possession the merchandise hereinbefore described, or so much thereof as may be found, to the end that the same may be dealt with according to law."

The Circuit Court of Appeals said—"The appellant contends that the affidavit upon which the search warrant was issued showed no facts upon which to base a finding of probable cause; that the search warrant was therefore illegal; and that the use of the property so seized as evidence in a criminal prosecution amounted to a violation of the protection afforded by the Fourth Amendment to the Constitution. . . .

"Had this warrant issued under authority of the Prohibition Act, it would be invalid, since the affidavit was merely based upon cause to suspect and suspicion. It issued, however, under the authority of [Sec. 595] the Tariff Act of 1930 . . ." (46 Stat. 752, c. 497; 19 U. S. C. A. Supp. 1595). [This is identical with Sec. 595, Tariff Act of 1922, 42 Stat. 983, c. 356, copied in the margin*.]

And it held—"In the instant case the seizure was under the tariff laws. The Government had a pecuniary interest in the smuggled goods. Following the reasoning in the cases cited, we conclude that that interest was sufficient to justify the issuance of the search warrant and that the search and seizure, based on the sworn complaint (phrased almost in the very words of the Tariff Act) and the warrant thereon, did not violate the constitutional rights of the defendant. This court in *Bookbinder* v. *United States*, 287 Fed. 790, certiorari denied, 262 U. S. 748, held that evidence obtained on a search warrant for violation of the customs laws is admissible in a prosecution for violation of the prohibition laws."

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*Act 1922 and Act of 1930. Sec. 595. Searches and seizures. (a) Warrant. If any collector of customs or other officer or person authorized to make searches and seizures shall have cause to suspect the presence in any dwelling house, store, or other building or place of any merchandise upon which the duties have not been paid, he may make application, under oath, to any United States contrary to law, he may make application, under oath, to any justice of the peace, to any municipal, county, State, or Federal judge, or to any United States commissioner, and shall thereupon be entitled to a warrant to enter such dwelling house in the daytime only, or such store or other place at night or by day, and to search for and seize such merchandise. . . .

We think the court below acted upon an erroneous view. Its judgment must be reversed.

This court has often spoken concerning searches and seizures and the limitations of the Fourth Amendment. *Locke* v. *United States*, 7 Cranch 339; *Boyd* v. *United States*, 116 U. S. 616; *Adams* v. *United States*, 192 U. S. 585; *Weeks* v. *United States*, 232 U. S. 383; *Gouled* v. *United States*, 255 U. S. 298; *Byars* v. *United States*, 273 U. S. 28; *Maul* v. *United States*, 274 U. S. 501; *Go-Bart Importing Co.* v. *United States*, 282 U. S. 344; *United States* v. *Lefkowitz*, 285 U. S. 452. See also Cooley, Constitutional Limitations, 7th Ed., p. 427.

Here, we are dealing with a warrant to search a private dwelling said to have been authorized by the Tariff Act. It went upon a mere affirmation of suspicion and belief without any statement of adequate supporting facts.

All unreasonable searches and seizures are absolutely forbidden by the Fourth Amendment. In some circumstances a public officer may make a lawful seizure without a warrant; in others he may act only under permission of one. In the present case the place of search and seizure was a private dwelling. The challenged warrant is said to constitute adequate authority therefor. The legality of the seizure depends upon its sufficiency. Did it issue upon probable cause supported by oath or affirmation within the intendment of the Amendment?

The Amendment applies to warrants under any statute; revenue, tariff, and all others. No warrant inhibited by it can be made effective by an act of Congress or otherwise.

It is argued that searches for goods smuggled into the United States in fraud of the revenue, based upon affidavits of suspicion or belief, have been sustained from the earliest times; that this practice was authorized by the Revenue Act of July 31, 1789, 1 Stat. 43, also subsequent like enactments. But we think nothing in these statutes indicates that a warrant to search a private dwelling may rest upon mere affirmance of suspicion or belief without disclosure of supporting facts or circumstances.

Although relied upon, we find nothing in *Locke* v. *United States* and *Boyd* v. *United States* which upholds the view of the Circuit Court of Appeals. The first of these causes was a proceeding to forfeit a cargo of imported goods seized for violation

of the revenue laws. It presented no question concerning the validity of a warrant. The second denied the right to compel production of private papers in a suit by the United States to establish a forfeiture of goods fraudulently imported.

Under the Fourth Amendment, an officer may not properly issue a warrant to search a private dwelling unless he can find probable cause therefor from facts or circumstances presented to him under oath or affirmation. Mere affirmance of belief or suspicion is not enough.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.